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Supreme Court, U.S.
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No. 00-606

In The Supreme Court of the United States

SUMMIT PROPERTIES, INC.; SUMMIT PROPERTIES, L.P.; SUMMIT PROPERTIES PARTNERSHIP, LP; STONY POINT/SUMMIT, L.P.; MACGREGOR/MCGUIRE, LP; HENDERSON/MCGUIRE PARTNERS, LP; OAK RIDGE/MCGUIRE PARTNERS, LP AND WAVERLY PLACE/SUMMIT PARTNERS, LP,

Petitioners,

v.

HOECHST-CELANESE CORPORATION f/k/a CELANESE CORPORATION; HOECHST CORPORATION; E. I. DUPONT DE NEMOURS & CO.; SHELL OIL COMPANY d/b/a SHELL CHEMICAL COMPANY; VANGUARD PLASTICS, INC.; BOW INDUSTRIAL CORP.; AND HOUSEHOLD INTERNATIONAL, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT THE DUPONT COMPANY'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the trial court properly dismiss Petitioners' civil RICO claim for failure to state a claim on which relief can be granted where Petitioners alleged predicate acts of mail fraud and wire fraud communicating allegedly fraudulent misrepresentations, but expressly disclaimed any reliance on such misrepresentations?

CORPORATE DISCLOSURE STATEMENT

E.I. DuPont de Nemours and Company is a publicly traded corporation listed on the New York Stock Exchange.

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Fed. R. Civ. P 59(e) 2

STATEMENT OF THE CASE

Petitioners brought this action in the United States District Court for the Southern District of Texas alleging violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, *et seq.*, and state law claims for products liability. App. 66a-76a. Petitioners are owners of commercial and residential properties in which polybutylene plumbing systems were installed. App. 20a. Defendants are producers of raw materials used to make components of the polybutylene plumbing systems, or manufacturers of those components or systems. Defendant DuPont is the producer of a raw material, Delrin®, acetal resin used by others in the manufacture of insert fittings for polybutylene plumbing systems. App. 53a.

Petitioners alleged in their complaint that Shell Chemical Company organized various manufacturers of polybutylene plumbing systems and component parts into an "enterprise" to promote polybutylene plumbing systems, create an enormous demand for such systems, and cause polybutylene to become the material of choice for plumbing and potable water service distribution systems. App. 21a. Petitioners further alleged that, in furtherance of the enterprise's goal to promote polybutylene plumbing systems, the Defendants made material misrepresentations to building code entities, builders, and plumbers concerning the attributes of the systems. App. 21a-22a. Petitioners alleged that these material misrepresentations constituted mail fraud and wire fraud. App. 24a-25a.

Petitioners conceded that they did not rely on anything that the Defendants published or said in purchasing the properties equipped with polybutylene systems. Petitioners alleged that they did rely on local building inspection officials, who represented that the buildings that

they purchased conformed to applicable building codes. App. 22a.

Defendants filed motions to dismiss for failure to state a claim on which relief could be granted. The district court granted the motions. The court held that absent an allegation that Defendants made material representations and that Petitioners relied on the mail and wire fraud allegations that constituted the predicate acts for civil RICO, the Petitioners could not satisfy the proximate cause element to sustain a RICO claim. App. 25a. The court dismissed the civil RICO claim with prejudice and declined to exercise further jurisdiction over the state law claims, dismissing them without prejudice. App. 27a.

Petitioners filed a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e). App. 13a. The district court denied the motion. App. 15a. The court ruled that, while the Petitioners correctly argued that reliance was not a required element of the predicate acts of mail or wire fraud, Petitioners must still satisfy the remaining elements of their civil RICO claim, including proximate cause. App. 15a. Reliance on the alleged misrepresentations was required to show proximate cause. *Id.*

Petitioners appealed to the United States Court of Appeals for the Fifth Circuit. App. 17a. The Court of Appeals affirmed. Again on appeal Petitioners maintained that individual acts of reliance were simply unnecessary. App. 7a. The Court of Appeals reasoned that the Petitioners were conflating the causation element in a claim for fraud with the causation element in a claim for products liability. App. 8a. In a fraud claim, the causal element links the defendant's fraud to the plaintiff's injury. In products liability, the causal element links the product defect to the plaintiff's injury. *Id.*

> As a product travels in the stream of commerce, inherent defects are carried with it, but fraudulent statements are not. With the abolition of privity requirements, injuries produced by product defect may be actionable by all users including those remote in the distribution chain from a defendant manufacturer. The causal connection between a misrepresentation and a subsequent harm, however, vanishes once the product travels beyond the entity who actually relied on the representation when making a purchasing decision.

App. 8a. The Court reasoned that, even assuming reliance on the alleged misrepresentations by those to whom they were allegedly made – building code entities, builders and plumbers, such allegations do not tell whether the misrepresentations proximately caused Petitioners' injuries, for which product defects were clearly a producing cause. App. 9a. Given that Petitioners stipulated their lack of reliance, they came into possession of the allegedly defective systems without relying on the alleged misrepresentations. *Id.* Whether they received the systems from the manufacturers or prior property owners, any past fraud did not proximately cause Petitioners' injuries because there was no reliance. *Id.*

The Court of Appeals also rejected Petitioners' attempt to import the securities law constructive reliance theory of "fraud on the market". App. 11a. The Court observed that not only had no court accepted application of the theory outside the context of securities fraud, but also that the Eighth Circuit had rejected its use in a similar civil RICO case, *Appletree Square I, L.P. v. W.R. Grace & Co.*, 29 F.3d 1283, 1287 (8th Cir. 1994). The Court held that the

critical element of an efficient market acting as an intermediary was entirely absent. App. 11a-12a.

The Court concluded that the general requirement of reliance in a civil RICO case premised on alleged fraudulent misrepresentations was a common sense liability limitation. Otherwise, RICO's treble damages and attorney's fees provisions would "infiltrate garden variety products liability cases whenever marketing promotions touted the merits of the products, even if no plaintiff relied on those representations." App. 12a. The Court was not persuaded that Congress intended its use of the "by reason of" language in RICO to federalize state laws of products liability -- laws that have hardly proved to be anemic.

The Plaintiffs below then petitioned this Court for writ of certiorari.

REASONS THE PETITION SHOULD BE DENIED

I. Introduction and Summary of the Argument

The court below correctly diagnosed Petitioners' claim as an attempt to federalize the state law of products liability. Absent a requirement to show proximate cause by pleading and proving reliance, almost every products liability plaintiff could allege the elements of a claim for civil RICO where a product's virtues were publicized in advertising or warranties. The court below properly recognized that Petitioners sought a radical extension of civil RICO by conflating distinct duties and liability regimes. App. 2a.

RICO imposes liability when a plaintiff is injured by reason of the predicate acts. In *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268-70 (1992), the Court held that the "by reason of" language incorporated the traditional doctrine of proximate cause. Therefore, the RICO plaintiff has the burden to plead and prove injury proximately caused by predicate acts of the defendant. Here, the Petitioners contended, and still contend, as a matter of law, that no reliance on the predicate acts was required.

Petitioners argue that reliance is not necessary to establish proximate cause but, beyond the discredited "fraud on the market" argument, never articulate what takes the place of reliance to establish the required proximate cause on the facts of this case. Petitioners concede as they must that *Holmes* recognizes that RICO's "by reason of" language imports traditional notions of proximate cause. Both *Holmes*, 503 U.S. at 272 n.19, and the opinion below, App. 10a, recognize that there may be circumstances not present here, in which the casual link required might be satisfied by other facts. But in this case, the Petitioners relied on misrepresentations communicated by alleged mail and wire fraud as the predicate acts and specifically disclaimed any reliance on those acts.

Having failed below, Petitioners posit a conflict in the Circuits because such conflicts are a recognized rationale for the grant of the petition for certiorari. The flaw in Petitioners' argument is that the purported conflict has never been recognized by this Court or by the courts which handed down the supposedly conflicting decisions.

On the contrary, the courts of appeals have cited their own decisions and the decisions of other courts of appeals without ever observing that there is any conflict that requires distinguishing the decisions or the intervention of this Court to resolve. Reference to the cited decisions will show that

there is no conflict in the application of the RICO statute. The courts have applied a consistent construction of the statute, adhering to this Court's analysis in *Holmes*.

Moreover, where the predicate acts are alleged misrepresentations there is no substitute for reliance on the proximate cause element. Petitioners' attempt to find a distinction in the case law between "face to face" misrepresentation and "complex schemes to defraud" simply ignores real distinctions in the law. Not all the cases cited are misrepresentation cases, but in those that are, the courts have consistently required individual reliance. In contrast, Petitioners' "complex scheme to defraud", dispensing with any need for reliance, is more like the discredited notion of applying "fraud on the market" to products liability. *See* App. 11a.

The court below never claimed that it was imposing a "blanket rule." This is a term applied by Petitioners, *see, e.g.*, Petition, at 9, but never used by the court. The court held only that detrimental reliance was required "in cases such as this one." App. 8a. The court held that there must be some sufficiently direct causal linkage between the predicate act and the claimed injury, and in cases of alleged fraudulent misrepresentation, that causal linkage is detrimental reliance.

Petitioners' argument ignores the chain of causation in this case. The court below never contended, as Petitioners charge, that under no circumstances could a RICO case be maintained in the absence of direct misrepresentations. The court held only that, where reliance was specifically disclaimed, there could be no proximate causation between allegedly fraudulent statements and the failure of the product due to an alleged inherent defect.

II. There is No Conflict Between the Circuits on the Reliance Requirement in Civil RICO Misrepresentation Cases.

Petitioners never make the case, or even assert, that the decision below violates *Holmes*. Moreover, Petitioners' alleged "conflicts" melt away on close examination.[1] As *Holmes* noted, the courts of appeals have overwhelmingly held that proximate causation is required. 503 U.S. at 265 n. 11. Among the cases cited by the Court were *Pelletier v. Zweifel*, 921 F.2d 1465, 1499-1500 (11th Cir.), *cert. denied*, 502 U.S. 855 (1991); and *Brandenburg v. Seidel*, 859 F.2d 1179, 1189 (4th Cir. 1988).

A. The Second Circuit Requires Reliance.

Petitioners postulate a "conflict" in Second Circuit law by citing *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1311-12 (2d Cir. 1990). But Petitioners concede that *County of Suffolk* was properly relied upon by the court below. Petition, at 13. *County of Suffolk* involved allegations by plaintiff electric utility rate-payers that misrepresentations were made to the rate-setting commission that resulted in increased rates to utility customers, including plaintiffs. The court held that the evidence was insufficient to show the required casual connection between the rate-payers' alleged injury and alleged misrepresentations. 907 F.2d at 1312. Petitioners instead cite *County of Suffolk* for a proposition that the court did not hold. They assert that by not stating that it required misrepresentations be made directly to the rate-payers or that the rate-payers be the "target," the Second Circuit necessarily recognized that classic reliance was not required. In *County of Suffolk*, the court held that the district court properly granted judgment

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[1] Petitioners concede that they do not find the purported conflict in the decisions of the Sixth and Seventh Circuits. Petition, at 23-24.

n.o.v. where the plaintiffs were unable to show any reliance (and thus, any casual connection) between alleged misrepresentations to the commission setting rates and the commission's decision on those rates as it affected the rate-payer plaintiffs.

Any potential reliance in *County of Suffolk* is distinguishable from the facts here. Even if the Defendants made misrepresentations to building code entities, and the promulgating authorities relied on those representations in promulgating the codes, the resulting codes would only permit, not require, use of polybutylene plumbing. This alone, as the court below recognized, App. 9a, would not establish the required causal link for purchasers of buildings.

Similarly, *Standardbred Owners Ass'n v. Roosevelt Raceway Assocs., L.P.*, 985 F.2d 102 (2d Cir. 1993), does not articulate a different proximate cause standard. The court held that the district court erred in holding that the plaintiffs lacked standing to assert a civil RICO claim. 985 F.2d at 105. The court said that where plaintiffs contended that defendants made misrepresentations that induced the plaintiffs to take actions and make expenditures that would result in plaintiffs' financial injury, the district court erred in holding that the alleged RICO violation was too remote. *Id.* Thus the court held that there was direct reliance by plaintiffs on the representations of defendants, a fact specifically disclaimed in this case.

B. Petitioners' Alleged Conflict in the Third Circuit Does Not Involve a Misrepresentation Case.

To distinguish Third Circuit precedent supporting the court below, Petitioners concede that lack of reliance can establish lack of proximate cause in "a simple two-party misrepresentation case," but argue that a different rule outlined in "a complex multi-party scheme to defraud, requiring neither misrepresentation to, reliance by, inducement of nor target status of the plaintiff." This is so, Petitioners argue, because the proximate cause requirement under RICO is the same as the general antitrust proximate cause requirement.

First, *Holmes* itself rejects any necessary equivalence between antitrust and RICO. While recognizing the antitrust model for the RICO statute, 503 U.S. at 267, *Holmes* held that "antitrust injury", for example, has no analogue in the RICO setting, "and hence any related relaxation of proximate cause requirements is inapplicable". *Id.* at 259 n. 15 (citing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495-97 (1985).

Second, the case on which Petitioners rely, *Environmental Tectonics v. W.S. Kirpatrick, Inc.*, 847 F.2d 1052, 1055 (3d Cir. 1988), *aff'd on other grounds*, 493 U.S. 400 (1990), was a bribery case, not a misrepresentation case. *Id.* at 1067. The court below never asserted that its holding exhausted the universe of potential RICO fact patterns. *See* App. 10a. In fact, the district court clearly recognized that there were situations, not presented below, that would not be subject to the court's reliance analysis. Commercial bribery cases such as *Environmental Tectonics* are one of those types.

Environmental Tectonics was also decided four years before *Holmes*. Even if the court were applying the same

standard of proximate cause, there is no necessary inference that its analysis was fully informed by the principles of *Holmes*.

Petitioners concede, Petition at 9, that *Ideal Dairy Farms, Inc. v. John Labatt, Ltd.*, 90 F.3d 737, 746-47 (3d Cir. 1996), cited by the court below, App. 7a n.16, supports the reliance requirement.

C. The Fourth Circuit Has Consistently Followed the Reliance Requirement.

Petitioners also err when they argue that the decision below conflicts squarely with the Fourth Circuit's decision in *Chisholm v. TransSouth Fin. Corp.*, 95 F.3d 331, 337 (4th Cir. 1996). In fact, *Chisholm* was cited by the court below. App. 7a n.16. The Fourth Circuit held that the plaintiffs had relied on the apparent legitimacy and legality of the operation of a fraudulent activity. Thus, there was reliance. Here, it was conceded by plaintiffs that there was no reliance on the allegedly fraudulent communications. *See* App. 7a n.15.

Chisholm followed *Holmes* in its analysis, 95 F.3d at 336, holding that a RICO plaintiff must prove that the defendant's violation proximately caused the plaintiff's harm. *Id.* The *Chisholm* court noted that the Fourth Circuit had adhered to a consistent position on RICO proximate cause since its 1988 decision in *Brandenburg v. Seidel*, 859 F.2d 1179 (4th Cir. 1988). *Brandenburg v. Seidel* was cited in *Holmes* as an example of the courts of appeals' overwhelming authority requiring a demonstration of proximate cause for civil RICO cases. 503 U.S. at 266 n. 11. *Brandenburg* was also cited by the district court in holding that Petitioners failed to state a claim, as having "thoroughly and persuasively addressed" the proximate causation issue. App. 23a.

In *Brandenburg*, depositors at an insolvent Maryland savings and loan association brought civil RICO claims against former officers and directors of the insolvent Maryland Savings Share Insurance Corporation (MSSIC), a state-created quasi-public entity insuring savings and loan deposits. The plaintiffs alleged that promotional and advertising materials issued by the MSSIC and the defunct savings and loan persuaded them to deposit their funds, which were lost when the institution failed and the insurance corporation also failed. The court held that plaintiffs failed to allege a sufficient causal connection between their loans and the allegedly fraudulent promotion. While the representations may have been a cause in fact of the deposits and may have induced the deposits, the cause of the savings and loan's and the MSSIC's failure was the savings and loan's failure to maintain adequate reserves and MSSIC's inadequate oversight.

The court held that, when the predicate act giving rise to civil RICO liability is alleged to have been mail fraud, plaintiffs must plausibly allege both that they relied in some way on the fraudulent mailing and that the mailing was a proximate cause of the injury to their business or property. *Brandenburg*, 859 F.2d at 1188-90.

Despite the authority of *Brandenburg*, the *Chisholm* plaintiffs advanced the same argument that Petitioners advance here,

> that § 1964(c)'s "by reason of" language contemplates that a civil RICO suit may be maintained, not only in mail fraud cases where the deceitful mailing is the blade rushing down toward the guillotine victim, but also in cases involving more grandiose

> schemes to cheat, where the mailing is but part of the frame that holds the blade.

95 F.3d at 337 (footnote omitted). The court answered the plaintiffs as follows:

> We have never held otherwise. Inasmuch as an injury may have more than one proximate cause, our rule that reliance be shown in civil RICO fraud actions does not also dictate that the fraud be the sole legal cause of the plaintiff's injury, so long as it is a legal cause. The only caveat is that, where fraud is alleged as a proximate cause of the injury, the fraud must be a "classic" one. In other words, the plaintiff must have justifiably relied to his detriment on the defendant's material misrepresentations.

Id. The court affirmed dismissal of the complaint because the plaintiffs failed to plead actual reliance on the allegedly fraudulent mailings. *Accord Caviness v. DeRand Resources Corp.*, 983 F.2d 1295, (4th Cir. 1993) (plaintiffs who never read private placement memoranda could not show reliance required to establish proximate cause).

Thus the Fourth Circuit has consistently followed the same proximate cause analysis as the court below. *John C. Holland Enters., Inc. v. J.P. Mascaro & Sons, Inc.*, 653 F. Supp. 1242 (E.D.Va.), *aff'd*, 829 F.2d 1120 (4th Cir. 1987). That case was a district court decision opinion affirmed without published opinion, and thus cannot be used to raise a conflict with *Chisholm* or *Brandenburg*.

D. <u>There is No Conflict Between the Decision Below and the Law in the Eighth Circuit.</u>

Petitioners allege a conflict between the decision of the court below and the law of the Eighth Circuit, but concede, as they must, that *Appletree Square I, L.P. v. W.R. Grace & Co.*, 29 F.3d 1283, 1285-86 (8th Cir. 1994), cited by the court below, supports its decision. Petition, at 10. Petitioners attempt to distinguish *Appletree Square* by calling it "an anomaly." But *Appletree Square* is, in many respects, one of the most similar cases on its facts to the case here.

Appletree was a state law products liability and RICO claim brought by the owner of an office building for damages resulting from installation of a fireproofing product containing asbestos. 29 F.3d at 1284. The owner did not contend that the manufacturer or any of the organizations to which the manufacturer belonged directed any misstatements or misrepresentations about the product to the owner, nor did the owner contend that it relied in any alleged misrepresentation in purchasing the building. 29 F.3d at 1286-87. Instead, the owner asserted a "fraud on the market" theory. *Id.* at 1287. The court held that the owner lacked standing because it could not show detrimental reliance on the alleged fraudulent acts. *Id.* at 1826-87. The court below relied on *Appletree* in its analysis of detrimental reliance generally and in its analysis of Petitioners' fraud on the market theory. App. 7a, 11a.

Petitioners cite two other Eighth Circuit decisions that they allege are "more representative" of Eighth Circuit jurisprudence. *Appletree* is dismissed as an "anomaly." Petition, at 10. Yet the Eighth Circuit has never perceived a conflict between *Appletree* and its other decisions, nor has the Circuit seen any need to distinguish *Appletree* in these decisions.

In *United HealthCare Corp. v. American Trade Ins. Co.*, 88 F.3d 563 (8th Cir. 1996), the plaintiff showed that it paid premiums for insurance coverage that were diverted by the defendant into accounts that he controlled, while he caused certificates purportedly evidencing non-existent insurance coverage to be issued to the plaintiff. *Id.* at 567-68, 573. The discussion cited by Petitioners, Petition at 22 n.16, 88 F.3d at 571 n.5, related only to proof of the predicate offenses of mail fraud and wire fraud, which do not themselves require reliance. *Id.*

In contrast, *Bieter Co. v. Blomquist*, 987 F.2d 1319 (8th Cir. 1993), was a bribery case. *Id.* at 1324. The court addressed RICO's application to the bribery context at some length. *Id.* at 1325-30. The court's conclusion does not articulate a conflicting rule with that of the court below in a misrepresentation case.

Atlas Pile Driving Co. v. Di Con Fin. Co., 886 F.2d 986 (8th Cir. 1989), predates *Holmes*, and holds only that a showing of mail fraud is not dependent on a showing of common law fraud. *Id.* at 980, 993.

E. Petitioners' Argument That There is a Conflict with the Eleventh Circuit Depends on a Vacated Opinion.

In asserting a conflict with Eleventh Circuit authority, Petitioners concede that the court below properly relied on *Pelletier v. Zweifel*, 921 F.2d 1465, 1499 (11th Cir.), *cert. denied*, 502 U.S. 855 (1991), cited with approval in *Holmes*. Yet Petitioners assert that their conflicting rule was adopted in *Taffet v. Southern Co.*, 930 F.2d 847 (11th Cir. 1991), *vacated*, 958 F.2d 1514 (11th Cir.), *aff'd on rehearing*, 967 F.2d 1483 (11th Cir. 1992). Apart from the fact that the opinion that Petitioners contend adopted their

rule was vacated, the court held on rehearing that the plaintiff had not suffered a predicate injury and thus failed to the threshold requirements of RICO. *Taffet*, 967 F.2d at 1494. If the plaintiff sustained no cognizable injury, there could be no holding on proximate causation.

Of the other Eleventh Circuit cases cited by Petitioners, *Cox v. Administrator, United States Steel & Carnegie Pension Fund*, 17 F.3d 1386, *as modified*, 30 F.3d 1347 (11th Cir. 1994), *cert. denied*, 513 U.S. 1110 (1995), was another bribery case. *All Care Nursing Service, Inc. v. High Tech Staffing Servs.*, 135 F.3d 740, 745 (11th Cir. 1998), *cert. denied sub nom. Prof'l Nursing, Inc. v. Bethesda Mem'l Hosp., Inc.* 526 U.S. 1016 (1999), was a case in which the court held that there was no colorable challenge to the plaintiff's RICO injury. Once again, analysis of the cases shows that there is no conflict within the circuit or with the decision below.

F. Petitioners' District of Columbia Authority Does Not Negate the Reliance Requirement.

Petitioners cite *BCCI Holdings (Luxembourg), S.A. v. Khalil*, 214 F.3d 168 (D.C. Cir.), *cert. denied*, -- U.S. --, 148 L. Ed. 2d 295 (2000), as rejecting the *Summit* requirement for reliance. But in *BCCI*, the facts were essentially uncontested. 214 F.3d at 170. The defendant was alleged to have acted as a nominee shareholder to conceal weakness in the bank's financial condition and other illegal activity and to have used his position to loot the bank's assets. *Id.* The court rejected the defendant's argument that the plaintiff must prove that it was the "intended target" of the RICO scheme and that the alleged injury was the preconceived purpose of the RICO activity. *Id.* at 173. There was no factual dispute concerning reliance on the alleged concealment. *See id.* at 170. The plaintiffs clearly alleged

that the defendant's concealment proximately caused their harm.

III. There is No Requirement for Uniformity Between Civil and Criminal Enforcement.

Petitioners also argue that there must be uniformity between the criminal and civil RICO enforcement schemes. Petition, at 7. Petitioners assert that the lack of uniformity will undermine RICO's dual enforcement scheme. Yet the courts have always recognized that the criminal aspects of RICO enforcement have substantial differences from its civil aspects. In *Sedima*, 473 U.S. at 493, this Court held that there is no requirement for criminal conviction to proceed with civil RICO claim for same activity. This obviates any concept of a necessary uniformity in enforcement.

IV. Petitioners' Attempted Federalization of Products Liability Claims Faces an Even Greater Body of Adverse Authority.

Holmes calls for an analysis of whether the alleged RICO injury is "direct" in the proximate cause sense. 503 U.S. at 272 n. 20. As a part of this inquiry courts consider whether there are more direct plaintiffs. But there is no implication that there is necessarily any plaintiff who can maintain a RICO claim. As the Court has observed, a defendant is not liable in RICO to those he has not injured, *Sedima*, 473 at 496, nor is he liable under RICO to those that he might have injured by other conduct. *Id.* Civil RICO was not intended, as the court below correctly held, as a general federal tort law.

There is now also a substantial and recent body of precedent that petitioners are unable to deal with rejecting federalization of products liability claims through RICO. Pension funds and health insurers filed many cases against

tobacco manufacturers alleging RICO claims. These have been uniformly rejected on the grounds that the alleged injury is too remote to satisfy RICO's proximate cause requirement. *See, e.g., Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229 (2d Cir. 1999), *cert. denied*, -- U.S. – 120 S. Ct. 799 (2000); *Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc.*, 171 F.3d 912 (3d Cir. 1999), *cert. denied*, 528 U.S. 1105 (2000); *Texas Carpenters Health Benefit Fund v. Philip Morris, Inc.*, 199 F.3d 788 (5th Cir. 2000); (*International Brotherhood of Teamsters, Local 734 Health & Welfare Fund v. Philip Morris, Inc.*, 196 F.3d 818 (7th Cir. 1999); *Oregon Laborers-Employers Health & Welfare Trust Fund v. Philip Morris, Inc.*, 185 F.3d 957 (9th Cir. 1999), *cert. denied*, -- U.S. --, 120 S. Ct. 789 (2000).

CONCLUSION

Petitioners have postulated a conflict between the circuits in order to obtain review of the Court of Appeals' routine application of §1964(c) and this Court's ruling in *Holmes*. Review of the case law demonstrates that the alleged conflict is contrived. The court below followed a substantial body of precedent in rebuffing Petitioners' attempt to federalize the law of products liability. The petition for writ of certiorari should be denied.

Respectfully Submitted,

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